

# Advisory Opinion

AO-IECDB 2011-07

November 10, 2011

Mr. Adam Gregg  
BrownWinick  
666 Grand Avenue, Suite 2000  
Des Moines, IA 50309

Dear Mr. Gregg:

This opinion is in response to your request for an opinion from the Iowa Ethics and Campaign Disclosure Board. You request this opinion on behalf of one of your clients. We note at the outset that the Board's jurisdiction is limited to the application of Iowa Code chapter 68A and 68B, Iowa Code section 8.7, and rules in Iowa Administrative Code chapter 351. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances. You advise us that you have a client that is seeking guidance in order to comply with Iowa Code section 68A.503. You provided us with the following facts: A limited liability company or a limited liability partnership (or other unincorporated business entity not otherwise subject to the contribution ban in Iowa Code Section 68A.503) conducts regular business operations. In those operations, it may receive income from individuals, corporations, or other business entities. The LLC or LLP is owned, in whole or in part, by at least one corporation.

You then posed the following questions:

(1) An LLC or LLP, through its business operations, receives income from individuals, corporations, and other business entities, which is commingled and becomes part of the LLC's or LLP's general operating budget. May the LLC or LLP (or another unincorporated business entity) make a contribution to a PAC or other committee with these general operating funds?

(2) Is it permissible for an LLC or LLP (or another unincorporated business entity) to make a contribution to a PAC or candidate committee if it is owned in whole or in part by a corporation?

Iowa Code section 68A.503 prohibits "an insurance company, savings and loan association, bank, credit union, or corporation [from making] a monetary or in-kind contribution to a candidate or committee except for a ballot issue committee." Iowa Administrative Rule 351—4.44 states "[t]he prohibition on corporate political activity

does not apply to . . . [a]n LLC, LLP, or any other organization that does not file articles of incorporation.” See also IECDB Advisory Opinion 2007-02. This Rule provides a blanket exception for LLCs, LLPs and other organizations that do not file articles of incorporation. The rule does not qualify or limit the exception based on ownership of these non-corporate business entities. Thus, we are of the opinion that an LLC, LLP or any other organization that does not file articles of incorporation may make contributions to a candidate or committee regardless of whether a corporation owns all or part of the non-corporate business entity.

We would caution any non-corporate entity such as an LLC or LLP to respect and obey Iowa Code section 68A.502 which prohibits contributions in the name of another. We believe section 68A.502 would be violated if an LLC, an LLP or similar non-corporate entity were created solely to make a campaign contribution. As long as the LLC or LLP is established for one or more legitimate business purposes, then we do not believe section 68A.502 would be violated in the event the contributing LLC or LLP has one or more corporate owners.

Moreover, we are of the opinion that an LLC, LLP or similar non-corporate entity that transacts business with and receives income from one or more corporations may make contributions from its general operating funds to a candidate committee or political committee without violating Iowa Code section 68A.503. That section prohibits corporations from making “contributions” to a candidate or committee except for a ballot issue committee. The Board does not consider business transactions between a candidate committee or political committee and a corporation (e.g. purchase signs, rental of official facilities, etc.) to be in-kind contributions as long as the purchase or rent is at fair market value. See Iowa Admin. Code 351—4.47. Likewise, income received from a corporation by an LLC, LLP or similar unincorporated entity which is deposited in the LLC, LLP or similar unincorporated entity’s general operating account and then contributed to a candidate committee or political committee is not a prohibited contribution as long as the income is generated via legitimate business purposes and not as a means to illegally funnel corporate money through the LLC, LLP or similar entity to a candidate committee or political committee (e.g. selling goods at inflated values with the agreement that the amount of money over and above the fair market value of the goods be contributed to a candidate committee).

In short, we are of the opinion that the answer to both of your questions is yes. However, we are considering amending Iowa Administrative Rule 351—4.44 to prohibit contributions by LLCs, LLPs and similar entities that are owned in whole or in part by corporations. You will be notified if this opinion is modified or rescinded.

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Chair  
John Walsh, Vice Chair

Saima Zafar  
Carole Tillotson  
Jonathan Roos  
Mary Rueter

Submitted by Megan Tooker, Board Legal Counsel

This section provides limited exceptions to this prohibition that are not applicable to your questions. See Iowa Code § 68A.503(3)-(6).